

HOW TO ASK THE COURT TO VACATE A DEFAULT JUDGMENT OF FORECLOSURE

What is a default judgment?

- You are in default if you do not respond to a Mortgage Foreclosure Complaint and do not file an appearance or answer with the court.
- If you are in default, the judge may enter a default judgment in favor of the other party without hearing from you first.
- You may be able to vacate (undo) the default judgment by filing a *Motion to Vacate Default Judgment*.
- If possible, you should file your *Motion to Vacate Default Judgment* not later than 30 days after the date the default judgment was entered against you.

NOTE: If you have legal reason to challenge (quash) service you need to file a *Motion to Quash* before or you file your *Motion to Vacate a Default Judgment* or jointly under [735 ILCS§ 5/2-619.1](#). You can find the *Motion* form at: <http://www.illinoiscourts.gov/Forms/approved/>. You may want to consult with a lawyer about whether you have a legal reason to challenge (quash) service [735 ILCS 5/2-301](#).

What do these terms mean?

- **Order:** A direction given by a court or judge requiring or allowing a person to do or not do something.
- **Judgment of Foreclosure:** A court document that a judge signs allowing the bank to sell the property.
- **Vacate an Order or Judgment:** Once an order or judgment has been signed by a judge, the only way for the judge to vacate (undo) it is to enter another order that withdraws (vacates) the first order.

Who may file a *Motion to Vacate Default Judgment of Foreclosure*?

- Your name is listed on the Summons and the Mortgage Foreclosure Complaint as a “Defendant”;
- An “Order of Default” has been entered; AND
- A “Judgment of Foreclosure” was entered.
- Each party in default must file a *Motion to Vacate Default Judgment*, either separately or together.

What forms do I fill out to ask the judge to vacate a Default Judgment of Foreclosure?

- ***Motion to Vacate Default Judgment of Foreclosure*** asks the judge to withdraw the previous order allowing the bank to sell the property; AND
- ***Notice of Motion to Vacate Default Judgment of Foreclosure*** tells all parties in the foreclosure case that you are asking the judge to withdraw the Default Judgment of Foreclosure.

Where can I find the forms that I need?

You can find the forms at:

<http://www.illinoiscourts.gov/Forms/approved/>.

What costs will I need to pay to ask the court to vacate a Default Judgment of Foreclosure?

- There may be a fee to file your *Motion to Vacate Default Judgment of Foreclosure* with the Circuit Clerk.
- If you cannot afford the fee, you can ask the court to file for free. Fill out and file an *Application for Waiver of Court Fees* to ask the court for a fee waiver. This is a separate set of forms you can find at: <http://www.illinoiscourts.gov/Forms/approved/>.

What do I do after I fill out my *Motion to Vacate Default Judgment of Foreclosure*?

Step 1: File your forms with the Circuit Clerk in the county where the court case is filed.

- You must electronically file (e-file) court documents unless (1) you are an inmate in a prison or jail and you do not have a lawyer, or (2) you qualify for an exemption from e-filing.
 - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer, (2) you have a disability that keeps you from e-filing, or (3) you have trouble reading or speaking in English.
 - Fill out a *Certification for Exemption from E-Filing* found here: www.illinoiscourts.gov/Forms/approved/default.asp.
 - File the original and 1 copy of your *Motion to Vacate Default Judgment of Foreclosure*, and the *Certification*, with the Circuit Clerk’s office in person or by mail.
- To e-file, create an account with an e-filing service provider.
 - Visit <http://efile.illinoiscourts.gov/service-providers.htm> to select a service provider. Some service providers are free while others charge a processing fee. For instructions on how to e-file for free with Odyssey eFileIL, see the self-help user guides here: http://www.illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp
- If you do not have access to a computer or if you need help e-filing, take your form to the Circuit Clerk’s office where you can use a public computer terminal to e-file your form.
 - You can bring your form on paper or saved on a flash drive.
 - The terminal will have a scanner and computer that you can use to e-file your form.

Step 2: Send a copy of your *Motion to Vacate Default Judgment of Foreclosure* to the other party.

- You must send your form to the other parties in the case. If a party has a lawyer, send the form to the lawyer.

- You may send your form to the other parties personally, by mail, third-party commercial carrier (e.g., FedEx or UPS), or through the court's electronic filing manager or an approved e-filing service provider. You may send your form to a party by email if they have listed their e-mail address on a court document. Complete the proof of delivery with information of how you sent the form to each party. It has room for 3 parties. If you are sending your form to more than 3 parties, fill out and file one or more *Additional Proof of Service* forms with the main form.

Step 3: Ask for a court date.

- Ask the Circuit Clerk if you have to schedule a court date or if one will be scheduled automatically.
- If you need to schedule the court date, ask the Circuit Clerk how to do so. The Circuit Clerk may schedule the court date or you may have to speak with other court staff.
- When you get your court date, ask if the court will send notice of the court date to the other party or if you need to.
- Enter the date and time in section 1 of the *Notice of Motion to Stay a Foreclosure Sale*.
- If the judge needs more information to make a decision, the judge may set up another court date. Make sure you understand what information is needed and get it before the new court date.
- If the judge needs to think about it more, the judge may let you know the decision later by mailing a court order or at another court date.
- If the judge has enough information, the judge may decide right then and fill out a court order. Get a file-stamped copy of the order.
- If the other party was not in court to get a copy, you must send them a copy by 5:00 p.m. on the date you get the order. Fill out and file a *Proof of Delivery* court form with the Circuit Clerk to show that you sent the copy. You may find the *Proof of Delivery* at: <http://www.illinoiscourts.gov/Forms/approved/>.

Step 4: Get ready for your court date.

- Decide and write down:
 - What you want to ask the judge to do for you; AND
 - What you will say to the judge if asked to tell your side of the case.
- Gather and make copies of pictures and documents you want the judge to see. Bring the original for the judge and one copy for you and each of the people in the case.

Step 5: Go to your court date.

- Bring these items with you to court:
 - A copy of the Mortgage Foreclosure Complaint and Summons;
 - Two copies of your completed and stamped *Motion to Vacate Default Judgment of Foreclosure and Notice of Motion to Vacate Default Judgment of Foreclosure*;

- *Order to Vacate Default Judgment of Foreclosure*; AND
- Other papers related to your mortgage or home such as: proof of your payment history, loan modification packet, information from a housing counselor, real estate sale contract, proof of employment or other income.

- Get to the courthouse at least 30 minutes early
- Go to the courtroom number listed on your court form. If your forms do not have a courtroom number look for a list of cases at the courthouse or ask the Circuit Clerk.
- Check in with the courtroom staff and wait for your name and case number to be called.
- When your case is called, walk to the judge and introduce yourself, and briefly tell the judge what you are asking for. The judge will let you know what will happen next.

How do I present my case to the judge?

Step 1: Tell the judge your side of the case and answer questions.

- Bring any important documents relating to your foreclosure including documents mentioned above.
 - Give a copy to the judge and a copy to the other party. Be prepared to explain why the document is important.
- The judge decides what materials can be considered in making a decision about your case.

Step 2: What do I do when the other party presents their case?

- The other party will also get to present their case.
- Write down your questions while they are speaking to the other party or judge.

Step 3: What happens after both sides present their case?

- The judge has to make a decision. The decision is called a court order.